



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

P.O. Box 30048

Lansing, Michigan 48909

Phone (517) 373-4835

Jennifer Warner
Director

MEMORANDUM

DATE: July 21, 2016

TO: All Judges
Court Administrators
Probate Registers
County Clerks

cc: Regional Offices
Judicial Information Services

FROM: Amy L. Byrd, Forms and Records Manager

RE: Trial Court Records Retention and Disposal Project

For at least the last decade, the State Court Administrative Office has been actively promoting increased use of technology in trial courts. A major part of this effort has focused on the way court records are created, retained, and ultimately disposed. In that regard, SCAO has engaged in very specific activities that would:

- 1) grant the judiciary authority to determine its records management policies,
- 2) remove barriers to use of technology for managing records, and
- 3) implement changes in practice to facilitate the use of technology in managing court records.

The first two goals were accomplished through amended court rules MCR 1.109 and 8.119, passage of 2013 PA 199 and 201, and an interim update to the records retention and disposal schedule in 2014.¹

¹ Until several years ago, most record retention periods were established by statute. In 2006, the Court approved creation of the Access to Records Committee (comprised of court staff, judges, and members of the state bar) to look at ways to update the manner in which courts create and maintain records. As a result of that committee's work, SCAO requested and the Legislature enacted numerous statutory amendments that eliminated specific record retention periods (and the requirement to retain records in paper format) and instead required SCAO to establish and maintain record management policies and procedures for the courts, including records retention and disposal schedules. MCL 600.1428. In addition, the Court adopted various court rule amendments that specifically authorized SCAO to determine these retention periods via MCR 8.119(K), accommodated electronic records and electronic signatures, and defined, for the first time, what is a court record.

Under MCL 600.1428 and MCR 8.119(K), the State Court Administrative Office is now required to establish and maintain records management policies and procedures, including records retention periods as prescribed by MCL 399.5. In anticipation of statewide use of electronic filing, electronic document management, and electronic data and document sharing, Trial Court Services (TCS) began a process to evaluate the existing trial court records retention and disposal policies and to develop statewide standards and guidelines for creating, maintaining, and disposing of records. Revision of General Schedule # 16 is a key preliminary step in effectively implementing e-filing, automated case management systems, electronic document management, and automated workflow.

Records Disposal Policy

The records retention and disposal schedule is the legal document that (1) sets time periods for keeping court records, (2) requires destruction of records or transfer of records to the Archives of Michigan (Archives) after records are no longer needed at the court, and (3) permits transfer of certain records to Archives for permanent retention as historical records.

The current schedule sets out minimum retention periods for records, but does not require records to be disposed when the retention periods have expired. Because a records disposal effort can be daunting, many trial courts in Michigan have not been disposing of court records when permissible. As a result, courts are facing not only ever-expanding and increasingly costly storage needs, but also an insufficient ability to manage inactive paper and microfilmed records and the challenge of long-term maintenance of archival quality electronic records (including data) in systems that must be frequently upgraded to remain accessible.

These issues, along with movement toward e-filing and electronic document management, require the judiciary to rethink current records management practices. The current record retention and disposal policy may result in the perception that people have unequal or unfair access to court records because some courts maintain records beyond a given retention period while other courts destroy records when the minimum retention period expires. A policy of mandatory disposal could alleviate this perception and prepare courts for the electronic management of records. SCAO is considering implementing a mandatory disposal policy because it:

- 1) ensures a comparable body of records from one court to another,
- 2) reduces inefficiencies in search and retrieval,
- 3) reduces unnecessary storage costs, and
- 4) creates equality because court users are both harmed and helped by record availability when seeking visas, licenses, housing, jobs, and driving privileges.

Because citizens shouldn't be treated differently depending on the court they visit, these decisions should be consistent statewide, which means records availability, or lack thereof, should be consistent. The decision to mandate disposal is not being taken lightly and SCAO continues to evaluate the appropriateness of this policy through research and input from a number of sources, including court administrators, clerks, registers, judges, the State Archivist, and other professionals in records management.

Revising the Records Retention and Disposal Schedule

Aside from the possible change in policy, to assist in evaluating the retention schedule, TCS established four work groups to recommend revisions to General Records Retention and Disposal Schedule #16 and to provide input for standards and guidelines. The work groups met throughout 2015 to draft proposed individual court-specific schedules to replace General Schedule #16.

In addition to the proposed schedules, SCAO proposed various court rule amendments that were supported by input from the records retention and disposal workgroups. The Court recently adopted these court rule amendments, effective January 1, 2017, and they will be implemented in conjunction with records retention and disposal policies, standards, and guidelines to be established by the SCAO under MCR 8.119.

Establishing Records Retention and Disposal Standards and Guidelines

TCS is developing the *Michigan Trial Court Records Retention and Disposal Policy, Standards, and Guidelines*, a single companion resource to the *Michigan Trial Court Case File Management Standards* (CFMS) that will include the following:

- Introduction
- Definitions
- Section 1: General Retention and Disposal Policy
- Section 2: Standards and Guidelines for Disposal of Records
- Section 3: Performance Plan and Best Practices
- Section 4: Retention Schedules
- Section 5: Additional Resources
- Appendix: Order to Dispose Court Records

Some of the work group members recently participated in record reviews conducted by TCS as a means of gathering information to assist in developing this resource. The best practices will cover case processing and recommended action steps intended to facilitate records retention and disposal. Additional resources will include cost information associated with long-term storage of court records and can be used by trial courts to support requests for funding needs.

Case management systems will be required to comply with all policies and standards, which may include transfer of case history (register of actions) from the case management system to a data warehouse for specified case types at certain stages.

Timetable for Implementing New Policy, Standards, and Guidelines

We anticipate the proposed retention schedules will be finalized by the end of July 2016 and presented to the Court before undergoing the approval process,² which takes approximately five to six months. TCS will continue work on the *Michigan Trial Court Records Retention and*

² As the retention schedule is considered “law” under MCL 399.5, it must be approved by the State Court Administrator; Records Management Services of the Department of Technology, Management, and Budget; the Archives of Michigan of the Department of Natural Resources; the Attorney General; and the State Administrative Board.

July 21, 2016

Page 4

Disposal Policy, Standards, and Guidelines throughout the remainder of 2016. We project that all the resources will be ready for distribution in late spring of 2017.

Next Steps for Courts

We recommend that any court planning to shift from a paper-based system to electronic document management first consider the SCAO's proposal for mandatory disposal of records before conducting a large-scale scanning project, especially one that involves back-scanning older records only for purposes of long-term retention. If you have any questions in this regard, please contact me at 517-373-4864 or TrialCourtServices@courts.mi.gov.